

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

CSX TRANSPORTATION, INC.,
individually and on behalf of
NORFOLK & PORTSMOUTH BELT LINE
RAILROAD COMPANY,

Plaintiff,

CIVIL ACTION FILE

vs.

NO. 2:18cv530

NORFOLK SOUTHERN RAILWAY
COMPANY, NORFOLK & PORTSMOUTH
BELT LINE RAILROAD COMPANY,
JERRY HALL, THOMAS HURLBUT,
PHILIP MERILLI, and CANNON
MOSS,

Defendants.

VIDEO DEPOSITION OF
STEVEN ARMBRUST, ESQ.

March 11, 2020

9:56 a.m.

McGuireWoods LLP
1230 Peachtree Street
Suite 2100
Atlanta, Georgia

Robyn Bosworth, RPR, CRR, CRC, CCR-B-2138

1 of New York.

2 Q Then when you started with Mayer Brown,
3 what type of work did you do?

4 A I was in the banking and finance
5 department, and the corporate M&A department as
6 well.

7 Q Is it fair to say those were transactional
8 departments, not litigation?

9 A That is fair.

10 Q And how long did you stay at Mayer Brown?

11 A Five years.

12 Q So in 2005 approximately you left Mayer
13 Brown?

14 A That's correct.

15 Q And where did you go to work?

16 A CSX.

17 Q And where? What location at CSX?

18 A In the Jacksonville headquarters.

19 Q And is it fair to say from 2005 to the
20 present you've worked for CSX?

21 A That's correct.

22 Q Have you had any breaks in employment and

1 worked at other places other than CSX from 2005 to
2 the present?

3 A I have not had any breaks during -- since
4 I started.

5 Q What was your first job at CSX?

6 A My first job at CSX was -- all of it has
7 been in the law department. My first job, though,
8 was in the regulatory side working on line sales and
9 abandonments.

10 Q And how long did you hold that position?

11 A I still handle line sales and
12 abandonments.

13 Q If you could take me from 2005 forward.
14 You said you worked on line sales and abandonments.
15 What other duties did you have from 2005 I'll say
16 until 2010?

17 A From 2005 to 2010, I worked on
18 intercompany matters, I worked for CSX Intermodal as
19 the temporary lead counsel, I worked on various
20 miscellaneous matters and commercial matters.

21 Q Okay. Still not in the litigation
22 section; is that a fair statement?

1 A That's fair.

2 Q Okay. And then from 2010 to the present,
3 can you tell me what your job duties and roles have
4 been as an in-house counsel at CSX?

5 A From 2010, I continued to work on
6 intermodal matters. I also began working more on
7 joint facility matters, so intercarrier matters,
8 continued to work on commercial matters, and with
9 the exception of some insurance work and regulatory
10 matters, I held the same roles, just expanded.

11 Q That's true through today?

12 A That's true through today.

13 Q And what is your official job title today
14 at CSX?

15 A Assistant general counsel.

16 Q When did you become assistant general
17 counsel?

18 A I believe it was late 2011.

19 Q And before that what was the title in the
20 legal department, just counsel or --

21 A Before that I was senior counsel.

22 Q You understand we're here about the

1 Norfolk Portsmouth Belt Line that's part of the
2 case; you understand that from reading some of the
3 documents in preparation?

4 A That's correct.

5 Q And what's your understanding of the
6 Norfolk Portsmouth Belt Line? What type of
7 organization is it?

8 A The Norfolk Portsmouth Belt Line is a
9 terminal railroad.

10 Q When was the first time at CSX you had any
11 interactions with the Norfolk Portsmouth Belt Line?

12 A When you say interactions, do you mean
13 with officers or employees?

14 Q Yeah, when -- as part of your job duties
15 at CSX, when was the first time you became aware of
16 the Norfolk Portsmouth Belt Line and started doing
17 any work related to it?

18 MR. JUSTUS: Objection, compound.

19 You can answer if you understand.

20 A As a lawyer in the CSX law department, it
21 was late 2008.

22 BY MR. LYNCH:

1 Q Did your work as an in-house counsel in
2 the year or two before attending NPBL meetings, was
3 that part of the calculus about why you became a
4 board member, to your knowledge?

5 MR. JUSTUS: Objection to the extent it
6 calls for privileged communications.

7 A Do I -- do I know why? I don't -- I don't
8 know specifically why.

9 BY MR. LYNCH:

10 Q Did you believe you were qualified to
11 serve as a board member at NPBL?

12 A Despite it not being -- being my first
13 time, I guess I -- I was confident that I could
14 serve my duties there.

15 Q It's fair to say you have been a lawyer
16 your whole life, right, adult life?

17 A It feels like it, yes. Yes.

18 Q You've never had any type of businesses or
19 operational jobs for CSX or any other railroad,
20 correct?

21 A That's correct.

22 Q So you were -- the expertise you brought

1 if they wanted to?

2 MR. JUSTUS: Just object to clarify. He
3 can answer this to the extent he's answering his
4 understanding as an NPBL board member --

5 MR. LYNCH: Totally.

6 MR. JUSTUS: -- but not as his
7 understanding as a CSX lawyer.

8 BY MR. LYNCH:

9 Q Yeah, and all my questions right now are
10 directed to you as an NPBL board member, not as a
11 CSX in-house counsel. And you were on the board
12 from 2010 to 2015, correct?

13 A Correct.

14 Q Okay. And when you were a board member,
15 did you understand that -- when you first became a
16 board member, the two shareholders were CSX and
17 Norfolk Southern, correct?

18 A Correct.

19 Q And you understood, based on your reading
20 of the operating agreement, that Norfolk Southern
21 and CSX could sign an agreement changing whatever
22 term they wanted to in the operating agreement,

1 Q Okay, Article Ninth. I know it's a little
2 odd. So I'm going to ask you about certain portions
3 of this section. The first part of ninth that I
4 want you to look at for me and I'm going to ask you
5 some questions is where it talks about a uniform
6 rate that shall be fixed for the movement of freight
7 cars. Do you understand what a uniform rate is?

8 MR. JUSTUS: Just to be clear, you know, I
9 don't think you're getting into anything else, but
10 to the extent he can answer in a nonprivileged way,
11 he will be answering as his understanding when he
12 was a member of the NPBL board, not any prior or
13 subsequent understanding.

14 BY MR. LYNCH:

15 Q I'm asking you as a board member
16 presently. When you were a board member, did you
17 understand what a uniform rate was?

18 A While I was a board member, I understood
19 what a uniform rate was.

20 Q Okay. And in the context of this
21 agreement, didn't a uniform rate mean that the eight
22 owners of NPBL would all be charged the same rate?

1 based on commodity in the operating agreement, do
2 you?

3 MR. JUSTUS: Objection to form.

4 A I haven't read the whole agreement, but in
5 Article Ninth?

6 BY MR. LYNCH:

7 Q Yeah.

8 A No. There's a distinction, I suppose,
9 between loaded and empty at least.

10 Q Okay. We'll get to that in a second. But
11 you'd agree with me that the uniform rate for moving
12 cargoes on freight cars, if it was \$200 per freight
13 car for Chesapeake and Ohio, it needed -- it had to
14 be \$200 for Norfolk and Carolina Railroad,
15 correct --

16 MR. JUSTUS: Objection to form.

17 BY MR. LYNCH:

18 Q -- that's what uniform rate means?

19 MR. JUSTUS: Objection, calls for a legal
20 conclusion.

21 BY MR. LYNCH:

22 Q You can answer based on your understanding

1 as a board member at the time.

2 A Sure. I'm sorry, could you give the
3 example again, please?

4 Q Yeah, for moving freight on a car on NPBL,
5 if it was \$200 per freight car for Chesapeake and
6 Ohio, which is one of the shareholders, it had to be
7 \$200 for the Norfolk and Carolina Railroad, which is
8 another shareholder, right?

9 MR. JUSTUS: Same objection. Also
10 objection, vague on what freight car means.

11 A Yeah, I'd agree that as long as the
12 commodity is the same as well, then yes, I agree.

13 BY MR. LYNCH:

14 Q But you'd agree, we've already asked you
15 this, commodity is not mentioned in section ninth,
16 correct, any distinguishing based on the uniform
17 rate?

18 MR. JUSTUS: Objection to form.

19 A I'd agree with you as a technical matter
20 it also meant -- references passengers, but I
21 never --

22 BY MR. LYNCH:

1 Q So, again, the uniform rate means all
2 these eight railroads in this operating agreement
3 should be charged the same thing, correct? Isn't
4 that what uniform means to you?

5 MR. JUSTUS: Objection, asked and
6 answered, argumentative, calls for legal conclusion.
7 BY MR. LYNCH:

8 Q You can answer that question.

9 A So in my capacity as a board member?

10 Q Yes.

11 A I couldn't get -- it would be difficult to
12 isolate even just this document from the many
13 documents I read before it including the tariffs and
14 the board minutes describing the desire to change
15 rates for various commodities.

16 Q Taking away the commodity issue,
17 regardless of the commodity, even if it was the same
18 commodity let's say, the rate had to be the same for
19 each one of the shareholders, correct?

20 MR. JUSTUS: Objection, vague.

21 A I don't know how to take it -- out the
22 commodity and say that is correct.

1 NSR.

2 BY MR. LYNCH:

3 Q And you would agree with me it would have
4 been inconsistent and a violation of the operating
5 agreement for that fee to be \$100 for Norfolk
6 Southern and 210 for CSX, correct?

7 MR. JUSTUS: Objection, calls for a legal
8 conclusion.

9 BY MR. LYNCH:

10 Q That would be a violation of Article Ninth
11 of the operating agreement.

12 MR. JUSTUS: Same objection.

13 BY MR. LYNCH:

14 Q Wouldn't you agree?

15 A As a board member, I would not agree that
16 CSX should have a different rate for a switch of a
17 car depending on what the commodity is.

18 Q So depending if it was -- whatever
19 commodity it was, Norfolk Southern and CSX should
20 have the same rate while you were a board member.
21 You believe that to be consistent with Article Ninth
22 of the operating agreement, correct?

1 question. Other than 210 being too high, is
2 there --

3 BY MR. LYNCH:

4 Q Yeah, you said you thought 210 was too
5 high because there wasn't sufficient intermodal
6 traffic at the Belt Line. That's what you said.

7 A I said that there was no traffic that --
8 that I wasn't aware of the Belt Line handling any
9 intermodal traffic? True that I've said that, I'm
10 not aware of the Belt Line handling any intermodal
11 traffic.

12 The \$210 over time appeared to be
13 something that either CSX or the customer or some
14 combination was able to absorb for nonrail traffic.
15 I'm not on the commercial side. I don't know
16 whether more traffic would have been moved, whether
17 it be grain, coal, what have you, or less, but the
18 distinction between some traffic moving versus zero
19 was how I would base my view that \$210 was too high
20 for intermodal traffic.

21 Q At that time while you were on the board,
22 did you advocate at all for CSX to have a lower line

1 the customer paid it or the exact logistics of it.

2 Do you remember that?

3 A Yes, I remember the statement, and what I
4 meant was that I don't know the -- it may vary by
5 customer, commodity, et cetera, whether the line
6 haul carrier absorbs the full \$210, whether it
7 absorbs a portion, or whether it pays the 210
8 itself. The Belt Line receives the payment, as I
9 understand it, regardless, it's just a question of
10 who's paying the -- ultimately whose pocket the \$210
11 comes out of.

12 Q When you were on the board, did you
13 believe the 210 line haul switching fee was
14 unreasonable and excessive under any of those
15 scenarios?

16 A With respect to the commodity in
17 intermodal, yes, but I didn't know enough, frankly,
18 about how the commercial aspect worked in terms of
19 who's the freight payor to make that judgment, if
20 that's sufficiently clear.

21 Q And CSX thought at the time you joined the
22 board and today that the 210 line haul switching fee

1 MR. JUSTUS: Take your time looking
2 through the rest of it if you need to get context.

3 A Okay, I'm sorry. You haven't asked a
4 question.

5 BY MR. LYNCH:

6 Q I wanted to make sure you have enough time
7 to read. I'm talking really directing you to the
8 last bullet or dash under opinion.

9 A Yes.

10 Q The last sentence says: Our current plan
11 is forced to run single stack, and our operating
12 performance to Cleveland is 32 hours.

13 Do you see that?

14 A Yes.

15 Q Would you agree with me that from a
16 competitive standpoint with Norfolk Southern, you
17 were at a disadvantage out of NIT because you
18 couldn't double stack to that part of the country?

19 MR. JUSTUS: Objection, lack of
20 foundation.

21 A I don't -- again, I don't have -- I'm not
22 a commercial expert or market expert. On the one

1 A Yes. I wouldn't know how long it would
2 take to conduct commercial and operational analysis,
3 and I don't believe that it would necessarily need
4 to go to a rate committee per se, but -- so I don't
5 have a useful answer, I guess, on that.

6 Q Okay. So I'm going to ask you, this was
7 sent on March 23rd, correct? You could see it?

8 A March 23rd, 2018.

9 Q Yeah. Would you agree with me that this
10 proposal never went to an NPBL rate committee?

11 MR. JUSTUS: Objection, foundation, calls
12 for speculation.

13 BY MR. LYNCH:

14 Q Based on your understanding, did it ever
15 go to -- do you have any knowledge of it ever going
16 to a rate committee?

17 A I'm not aware of it going to a rate
18 committee, the March 28th --

19 Q March 23rd.

20 A -- March 23rd, 2018, proposal, no.

21 Q Are you aware of the March 23rd proposal
22 going to a board of director --

1 A Yes.

2 Q Okay. In those communications, how did
3 you alert the people at CSXT whether you were
4 communicating with them wearing your board of
5 directors Belt Line hat or your CSX in-house legal
6 hat?

7 MR. JUSTUS: Objection, asked and
8 answered.

9 A So going back, I don't recall having any
10 conversations with individuals as an NPBL board
11 member. I don't know where that -- the only
12 occasion would really be to communicate with the
13 Belt Line management or fellow board members.
14 BY MR. SNOW:

15 Q Am I to understand that all your
16 communications with CSXT about the Belt Line would
17 have been in your capacity as in-house counsel for
18 CSXT?

19 A That's my recollection.

20 Q After Fredrik Eliasson stepped off the
21 Belt Line board, he was replaced by another
22 gentleman. Do you remember who that was?

1 looking at a facility there.

2 Q And that ultimately didn't happen, right?

3 A That's correct.

4 Q Had it happened and had Perdue built that
5 new facility, it would have meant less business for
6 the NPBL; am I right?

7 A Not necessarily. As far as I'm concerned,
8 and, again, I'm not the commercial person, but that
9 was not my understanding.

10 Q Okay. So do you have any more
11 recollection then as to how in any way Mr. Moss's
12 conduct in relationship to that Perdue episode
13 breached his duties to NPBL?

14 A I can't answer that without speculating
15 based on vague memories. As I --

16 Q I don't want you to speculate.

17 A I don't have memory of what the concern
18 was, but I don't know if my memory on that is -- is
19 accurate.

20 Q Okay. Anything else?

21 A I'm not -- I'm not an operating person, so
22 I don't -- I don't really understand the